Chapter 7
The Practice of Naming and Shaming through the Publicizing of "Culprit" Lists

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ABSTRACT

A long, seemingly endless list of names of men and women "worthy of shame," aimed at publicly shaming them, has taken the mass media and public authorities by storm. Such public shaming practices can be traced back to the Byzantine era, when culprits were made to sit backwards on a donkey as a punishment, or the judge placed his hands in cinder and smeared their faces with black film, thus publically pillorying them, based on the conviction that a punishment's most important aspect is social stigma and shame induced by public acts. This chapter examines various examples of "public shaming" lists and the general problematic of non-discrete publicizing of a full list of names.

1. INTRODUCTION

A long, seemingly endless list of names of men and women "worthy of shame," aimed at publicly shaming them, has taken the mass media and public authorities by storm. Such public shaming practices can be traced back to the Byzantine era, when culprits were made to sit backwards on a donkey as a punishment (Mitrou 2012, p. 15), or the judge placed his hands in cinder and smear their faces with black film, thus publically pillorying them, based on the conviction that a punishment's most important aspect is social stigma and shame induced by public acts. Indeed, this is the etymology of the Greek word "mountza,"[1] which was used as a form of punishment applied in cases of minor offences.

2. RECENT EXAMPLES OF SUCH LISTS

Greece has numerous examples of 'public shaming' lists, such as the names of military service, lists of all taxpayers, of tax evaders, of large state debtors, of 'tax-free' Swiss bank account holders, and even names and photographs of HIV-positive female prostitutes.

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In its Decision 7.4.05, the Hellenic Data Protection Authority (HDPA), disputed the assumption that publicizing names of 'wrongdoers' constituted a necessary and appropriate means for monitoring military service evasion, given that both the best interests of the public and the lawful interests of the Ministry of Defense could also be served through the collection and processing of data required for the control and exercise of disciplinary and criminal proceedings in cases of irregularities pertaining to exemptions from military service. With its Decision 6/2007, the HDPA held that the extensive publicizing, and all the consequences that it can have on the emotional well being, privacy and reputation of concerned individuals would constitute an inescapable penalty that contravenes Article 7 of the Greek Constitution, Article 1 of the Greek Criminal Code, along with Articles 6 and 7 of the European Convention on Human Rights (ECHR). The HDPA made it clear that the practice of shaming has no legal grounds and consequently cannot be used as a state mechanism to enforce military service.

In the cases where taxation lists were publicized, HDPA Opinion 1/2011 held that, for many categories of law-abiding taxpayers, the practice of publishing tax evader lists bears not only the risk of unnecessarily exposing personal tax information for public perusal most importantly, it also entails the danger of leading to the processing of the subjects' data for purposes that may directly affect their personal freedom to participate in the social and economic life of the country. In this regard, the ability of having direct access to taxation data may unfairly affect their various transactions, as this could serve purposes other than those for which such data had been collected by the relevant tax authorities (e.g., this data could be used to determine prices relating to bilateral contracts, such as in sales deeds, setting the fees for leasing agreements, negotiating salary levels in employment agreements, selecting individuals or groups to be fired). Moreover, the HDPA held publicizing such lists also presented opportunities for criminal activities (e.g., extortions, thefts, and kidnappings), at least against certain types of taxpayers. The contribution of this HDPA Opinion, apart from highlighting the dangers involved in making such lists public, was also that the publicizing of tax returns and the ensuing scrutinizing of the accuracy of the data in them by ordinary citizens cannot be used to overcome the shortfalls of the various tax collection mechanisms in place for carrying out thorough checks.

With reference to lists of tax evaders, the HDPA (Decision 54/2011) held that this data processing was not provided for expressly in the law and that it contravenes the relevant provisions of Article 85 of the Income Tax Code and of Article 31 of the Code of Accounting Books and Records, both of which establish tax privacy, which may only be lifted in the limited circumstances specifically set out by the legislation. Apart from the fact that such processing is not laid out in the relevant legislation, this publicizing of offenders also can be construed as serving as a second penalty for the same offence and, as such, is contrary to the fundamental criminal law principle of *ne bis in idem*. In this sense, the HDPA ruling emphasized the principle of the legality of administrative actions, which prevents any indirect sanction that does not stem from that principle.

The HDPA in its Opinion 4/2011 opined in favour of publicizing the names of large state debtors on the basis of especially restrictive conditions of publication that are very difficult to fulfil. More specifically, under the law, public disclosure of information concerning outstanding debts to the public must meet all of the following: exclusively involve arrears in taxation, duties and other charges; the existence of a taxation offence must have been established; timely prior written notification to the tax offender whose intended data publication is about to occur must have taken place and a 15-day deadline for the settlement of the outstanding debt must have been issued; the identity of each such individual must be duly and adequately verified; furthermore, the names of